CF0000060812

(2) CA 375/97 22

APPEAL PRISONER

S.T. No. 235/95

No. 576 Name लक्ष्मण

Father's Name मानसाय Resident ग्राम - गंगालूर
थाना - गंगालूर

Age 30 वर्ष Sentenced to आजीवन कारावास on 21.11.96

Under Section 302 भा० द० वि० by द्वितीय अति० सत्र न्यायाधी० जगदलपुर

It is explained to the prisoner that if he states or wishes to be represented by a legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears If the legal practitioner does not appear within seven days he may be heard at all if legal practitioner the court may proceed at once with the case and will not be obliged to give a bearing to any legal practitioner who should appear.

1. Date of application for copy of Judgement :- No.
2. Date of which copy received :- 21.11.96
3. Date on which appeal sent :- 28.11.96
4. Whether the prisoner wished to be represented or not :- Yes / ~~No.~~

No. 576 Name लक्ष्मण पिता मानसाय

Continued in जिला Jail प्रथम श्रेणी जगदलपुर

No. 483 / अपराध/96 Dated 28/11/96

Forwarded to the CHIEF JUDICIAL MAGISTRATE JAGDALPUR tegether with a copy of Judgement or order passed in the case for favour of transmission to the proper Applleate Court.

अधीक्षक
जिला जेल प्रथम श्रेणी
जगदलपुर

Su perintendent-Central / Distt / Sub-Jail.

with no Bail

Date of receipt in C. J. M. Office. 23/12/96

Date of receipt of record to accompany. —

Memo of Appeal of the Appellate Court. —

No. 20 (1) dated 24/12/96

Forwarded to the H'ble S.J. Jagdalpur

C. R. MAGISTRATE [redacted]

Date of receipt in Applieate Court

(24)

(23)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr A 375/97 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: HON'BLE SHRI L.C.BHADOO
& HON'BLE SHRI DHIRENDRA MISHRA, JJ

CRIMINAL APPEAL NO. 375 of 1997

Appellant : Laxman

Vs.

Respondent : State of Madhya Pradesh

Shri Praveen Das learned counsel for the appellant.

Shri U.N.S. Deo Additional Public Prosecutor with Shri Akhil Mishra, learned P.L. for the respondent/State.

ORAL JUDGMENT

(09.03.2006)

Per L.C. Bhadoo, J

By this appeal the accused/appellant has challenged the legality, propriety and correctness of the judgment of conviction and order of sentence dated 21.11.1996 passed by Additional Session Judge, Bastar at Jagdalpur in Session Trial No. 235/1995 whereby learned Additional Session Judge after holding the accused/appellant guilty for commission of the offence under section 302 of the IPC sentenced him to undergo imprisonment for life.

[पीछे देखिये

(24)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक CrA 375/97 सन् 200

.....विरुद्ध.....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

2. The case of the prosecution in brief is that PW-2 Arjun lodged a report P-7 in police station Gangaloor to the effect that on that day at about 5 a.m. he along with his wife and mother went to the forest for collecting Mahua seeds and Kamaldayee aged about 12 years was at residence. After one hour Kamaldayee came weeping to the forest and informed his mother that when Chamru was sleeping on the cot Laxman murdered Chamru by assaulting with a rammer as he attacked three-four times. Receiving this report the Station House Officer of Police Station S.S. Dhruv PW-4 left for the scene of occurrence. After giving notice to the Panchas he prepared Panchnama P-1 of the dead body of Chamru. He took into possession the underwear of the deceased under P-2. Blood stained and plain soil were taken into possession under P-3. Rammer i.e. weapon of the offence was taken into possession under P-9. Body was sent for post mortem examination to Primary Health Centre Gangaloor where Dr. M.K. Suruyavanshi conducted the post mortem examination on the body of the deceased and prepared post mortem report P-10.

3. After completion of the investigation the charge sheet was filed against the accused/appellant in the Court of Judicial Magistrate First Class, Jagdalpur who in turn committed the case to the Court of Session Judge Jagdalpur from where learned Additional Session Judge received the case on transfer for trial.

4. To prove the charges against the accused/appellant the prosecution examined six witnesses. Statement of the accused was recorded under section 313 of the Code of Criminal Procedure in which he

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denied the prosecution evidence appearing against him and stated that he is innocent and has been falsely implicated in the case.

5. Learned Additional Session Judge after hearing the arguments of the counsel for the respective parties has convicted and sentenced the accused as mentioned in paragraph one of this judgment.

6. We have heard Shri Pravin Das learned counsel for the accused/appellant and Shri U.N. S Deo Additional Public Prosecutor and Shri Akhil Mishra Panel Lawyer for the State.

7. Homicidal death of Chamru is not in dispute.

8. As far as the involvement of the accused/appellant in the crime in question is concerned, PW-1 Kamaldayee is the eyewitness to the incident who has witnessed the crime in question when the accused assaulted the deceased with rammer. At the time of giving evidence Kamaldayee was aged about 13 years. For placing reliance on the evidence of a child witness the Court is required to ascertain that such witness has not been subjected to tutoring as the Supreme court in the matter of **Arbind Singh Vs. State of Bihar** reported in **1995 Supp (4) SCC 416**, has held that child witness is prone to tutoring and hence court should look for corroboration particularly when the evidence betrays traces of tutoring. In the matter of **Panchhi and others Vs. State of U.P.** reported in **AIR 1998 Supreme Court 2726** the Apex Court has held that it cannot be said that the evidence of a child witness would always stand

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irretrievably stigmatized. It is not the law that if a witness is a child his evidence shall be rejected, even if it is found reliable. The law is that evidence of a child witness must be evaluated more carefully and with great circumspection because a child is susceptible to be swayed by what others tell them and thus a child witness is an easy prey to tutoring. Evidence of a child witness is permissible if such witness is found competent to testify and the court after careful scrutiny of its evidence is convinced about the quality and reliability of the same, where the witness described the detail scenario implicating the appellant, conviction can be based placing reliance thereupon.

9. Applying the above principle if we look into the evidence of PW-1 Kamaldayee she has categorically stated in paragraph one of her evidence that Arjun and his wife went to collect Mahua seeds in the morning, she was in the house and Chamru was also sleeping in the house. Accused came and assaulted Chamru on his head thrice, she saw the accused while attacking the deceased. Thereafter, she went to the forest and informed her grand father about the incident. In the cross examination she has categorically stated that she saw the accused attacking the deceased. She has further stated that at that time she was brooming and after hearing the cries of Chamru she went and saw the injuries on his head and Chamru was lying there and rammer was lying on the spot.

10. Learned counsel for the accused/appellant argued that understanding of this witness can be assessed from the fact that in the

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very first question when she was asked wherefrom she has come, she stated that she does not know. In the cross examination she has stated that she was busy in brooming and she saw the assault after hearing the screams of Chamru, therefore, it shows that this witness had not witnessed the crime in question. In other words, she has not witnessed the accused assaulting the deceased.

11. We are of the considered opinion that the arguments advanced by the counsel for the accused/appellant is without any merit for the reason that PW-1 Kamaldayee has categorically stated that she saw the accused assaulting the deceased with rammer on his head. Evidence of this witness further stands corroborated by the medical evidence of Dr. M.K. Suryavanshi PW-5 who has stated in his evidence that three injuries were found on the head of the deceased and right temporal bone was found fractured and which was the cause of the death of the deceased. This witness has further stated that the accused assaulted the deceased three times with rammer. The evidence of Kamaldayee is further corroborated by the fact that Arjun PW-2 has stated in his evidence that this witness came to the forest where he was collecting Mahua seeds and informed him that accused had assaulted Chamru with rammer on his head, on which he immediately rushed towards the house. PW-3 Chander has also stated in his evidence that when he heard the cries of Chamru, he went there and on inquiry Kamaldayee informed him that accused assaulted the deceased with rammer. Arjun reported the matter to the police at about 11 a.m. in which also the name of the accused finds place that he attacked the deceased with rammer.

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12. Therefore, for the foregoing reasons, the evidence of this child witness who was aged about 13 years at the time of giving evidence inspires confidence of the Court and there is no reason to disbelieve the evidence of Kamaldayee, and her presence in the house in the early hours can also not be doubted. Thus we are of the considered opinion that the finding recorded by the trial Court convicting the accused under section 302 of the IPC and sentencing him to undergo imprisonment for life does not suffer from any illegality or infirmity.

13. In the result, the appeal being devoid of merit is liable to be dismissed. It is accordingly dismissed.

Sd/-
L.C.BHADOO
Judge

Sd/-
Dhirendra Mishra
Judge

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21.12.06 24.1.06